# STATE OF MICHIGAN

# COURT OF APPEALS

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| WILLIAM Q. TINGLEY, III and BRIDGET TINGLEY,<br><br>Plaintiffs-Appellants,<br><br>v<br><br>PIONEER GENERAL CONTRACTORS, INC., DYKEMA EXCAVATORS, INC., FIFTH THIRD BANCORP, and PNC FINANCIAL SERVICES GROUP,<br><br>Defendants-Appellees. | UNPUBLISHED<br>December 17, 2013<br><br>Nos. 309537/312177<br>Kent Circuit Court<br>LC No. 11-009007-CZ |

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Plaintiffs[1] appeal as of right the order granting summary disposition pursuant to MCR 2.116(C)(7) and (8) in favor of defendants in this negligence action involving personal injury. We affirm.

Plaintiff filed this negligence action on September 22, 2011, and filed a first amended complaint on December 16, 2011. The complaint relates to defendants' work on the redevelopment of the former Berkey & Gay furniture site located at 940 Monroe, NW, in Grand Rapids. Defendant Pioneer General Contractors, Inc., was the general contractor on the property. Defendant Dykema Excavator's, Inc., was a subcontractor involved in the excavation, handling, and removing of soils on the site. Defendants Fifth Third Bancorp[2] and PNC Financial Services

[1] The use of the singular "plaintiff" in this opinion will refer to William Q. Tingley, III. Plaintiff Bridget Tingley's loss of consortium claim is derivative of William's personal injury claims.

[2] According to defendant Fifth Third Bancorp, Old Kent Bank made a construction loan commitment for the renovation of the property. Old Kent Bank was a subsidiary of Old Kent Financial Corporation, which merged with Fifth Third Financial Corporation. Fifth Third Financial Corporation is a separate entity from and a subsidiary of Fifth Third Bancorp. Fifth Third Bankcorp was not a party to the loan agreement.

Group allegedly financed the redevelopment project. Plaintiff's place of business was adjacent to the property.

The action asserts that defendants are liable for personal injuries plaintiff allegedly suffered as a result of exposure to toxic chemicals released from the Berkey & Gay site, and loss of consortium suffered by plaintiff's wife.[3] The "wrong" of which plaintiff complained was the release of toxins through the transportation of allegedly contaminated soil within locations on the site itself, as well as off-site. Plaintiff's original complaint alleged that the redevelopment occurred between November 1999 and August 2001. Plaintiff alleged in one place in his first amended complaint that the soil transportation occurred between November 1999 and May 2006, and in another place alleged that the soil transportation began "beginning in April 2000." Plaintiff alleged that, due to defendants' negligence, he was exposed to toxic materials and substances that caused various health problems. He alleged that the exposure occurred during the defendant developers' excavation and/or transportation of contaminated soil from the site during the redevelopment, but that his injuries did not surface until 2009.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), asserting that the cause of action was time-barred and, with the exception of PNC,[4] that res judicata barred the cause of action. They also moved for sanctions pursuant to MCR 2.114(E) and (F), MCR 2.625(A)(2), and MCL 600.2591.

The lower court record reveals that plaintiff has filed multiple lawsuits against defendants in both circuit court and federal court related to the redevelopment of the Berkey and Gay site. The trial court's opinion in the present case sets forth the proceedings in these prior suits:

> On April 15, 2002, Tingley filed a lawsuit in the Kent County Circuit Court on behalf of his businesses, entitled *Proto-CAM, et al v 900 Monroe LLC, et al*, Case No. 02-03723-NZ. Tingley eventually dropped the corporate plaintiffs and proceeded to litigate the claims individually [first amended complaint dated June 11, 2002).[5] Significantly, Tingley alleged in that lawsuit: (1) that he was

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[3] Plaintiff has attached to his brief on appeal the affidavits of himself, his wife, and his physician. None of these affidavits were presented to the trial court before the court ruled on the motions for summary disposition. Further, the affidavit of plaintiff's physicians only details plaintiff's medical issues and does not offer an opinion regarding the cause of plaintiff's ailments.

[4] Defendant PNC was not a party to the previous lawsuits and therefore did not move for summary disposition on the basis of res judicata.

[5] In the first amended complaint filed on June 11, 2002, plaintiff averred:

> 1. This is an action to recover compensatory and exemplary damages the Plaintiffs have **suffered personally** and to their business and property as a consequence of the Defendants' conspiracy to **remove and dispose of hazardous waste** from the site of the old Berkey & Gay Furniture factory . . . .

exposed to dangerous levels of hazardous substances, (2) that he knew contaminated soil had been released that could cause personal injury, and (3) that he had already suffered personal injury at that time as a consequence of his exposure to the alleged toxic soil. The Court dismissed the case on July 22, 2002, and both the Court of Appeals and the Michigan Supreme Court upheld the dismissal.

Tingley filed another lawsuit in the Kent County Circuit Court on September 25, 2002, entitled *William Q Tingley III v Ward A Kortz, et al*, Case No. 02-09503-CE.[6] In that case, Tingley specifically alleged that he had suffered

5. . . . The Defendants also retaliated by **exposing the Plaintiffs to dangerous levels of arsenic and other hazardous substances** . . . .

7. As consequence of the Defendants' conspiratorial acts to **unlawfully remove and dispose of hazardous waste** from the Berkey & Gay site . . . the Defendants have . . . [4] damaged the Plaintiff's business and property, unjustly enriched themselves at the Plaintiffs' expense, and **caused personal injury to the Plaintiffs.**

93. . . . Defendants knew or should have known that **these releases of the Hazardous Waste could cause personal injury or property damage**.

96. The Plaintiffs **suffered personal injury** and damage to their property and business as a consequence of these violations of the Environmental Response Act . . . .

102. In violation of MCL 324.20139(2)(a) the Defendants, in conspiracy, knowingly released, or caused to be released, the Hazardous Waste at the Filtration Plant in violation of the law and the Defendants knew or should have known that these releases of the Hazardous Waste could cause **personal injury** or property damage.

141. As a result of the Defendants' conspiratorial acts to unlawfully remove and dispose of the Hazardous Waste, the Defendants . . . caused significant damage to the Plaintiff's business and other property, **caused personal injury to the Plaintiffs** . . . .

Under "Relief Requested, plaintiffs requested, inter alia,

7. That the Court enter judgment against the Defendants for the amount of damages that the Plaintiffs have sustained, including compensation for the use of the Facility, damage to the Plaintiffs' business, costs the Plaintiff incurred to recover the Facility, and other losses **and injury suffered by the Plaintiffs**. [Emphasis added.]

[6] In the September 25, 2002, complaint, plaintiff averred:

personal injury as a result of his own contact with the alleged hazardous waste. The Circuit Court dismissed this lawsuit on the merits and the dismissal was upheld by both the Court of Appeals and the Supreme Court. Finally, Tingley filed two federal lawsuits in the United States District Court for the Western District of Michigan pertaining to the Berkey and Gay redevelopment which also ended in dismissal and sanctions.

Following a hearing on the motions for summary disposition, the trial court found that plaintiff's lawsuit is barred by res judicata and, with regard to PNC, by the statute of limitations in MCL 600.5805(8).[7] With regard to res judicata, the court noted that the disputed issue was

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1. The Defendants conspired to dispose of and conceal their disposal of contaminated soil . . . .

4. The Defendants' reckless disposal of this hazardous waste poses a continuing **threat to human health** and the environment . . . .

18. . . . [T]he soil throughout the site was contaminated with two dozen hazardous substances in concentrations toxic to human health and the environment.

67. . . . Furthermore, the Plaintiff has suffered **injury to his person** and economic losses . . . .

76. The violations of Part 111 . . . alleged in this Count **caused or contributed to the damages described in paragraphs 64 through 67** of this Complaint.

85. The violations of Part 111 . . . alleged in this Count **caused or contributed to the damages described in paragraphs 64 through 67** of this Complaint.

94. The violations of Part 111 . . . alleged in this Count **caused or contributed to the damages described in paragraphs 64 through 67** of this Complaint.

Under "Relief Requested," plaintiff asked, inter alia,

8. That the Court enter a judgment against the Defendants for damages in the amount of losses and **injury suffered by the Plaintiff** because of the Defendants' violations of Part 111, concealment of those violations, conspiratorial acts, and retaliatory acts. [Emphasis added.]

[7] Although not relevant to this appeal in light of our holding, *infra*, that plaintiff's claims against all defendants except PNC are barred by res judicata, the trial court also found, with regard to defendants Dykema and Pioneer, that plaintiff's claims were barred by the statute of repose found in MCL 600.5839.

whether the matter contested in the present case was or could have been resolved in the first case. The trial court noted that plaintiff alleged in the 2002 action that "he had suffered personal injury as a result of his own contact with the alleged hazardous waste." The trial court noted that even if plaintiff did not assert a personal injury cause of action during the 2002 litigation, his claims were still barred because he could have raised his claim, but did not. The trial court determined that plaintiff's injuries arose out of the same transaction and core operative facts as the 2002 litigation, and that plaintiff's assertions of personal injury within his 2002 complaints shows that he did suffer some type of personal injury at that time. Thus, his personal injury claims could have been resolved in the 2002 litigation regardless of whether his symptoms subsequently changed or worsened.

Plaintiff first argues that the trial court erred in holding that res judicata barred plaintiffs' claims against all of the defendants except PNC. The applicability of the doctrine of res judicata is a question of law that is reviewed de novo. *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

In general, res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action is identical to that essential to a prior action. The purposes of res judicata are to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication. Res judicata requires that (1) the prior action was decided on the merits, (2) the decree in the prior action was a final decision, (3) the matter contested in the second case was or could have been resolved in the first, and (4) both actions involved the same parties or their privies. *Richards v Tibaldi*, 272 Mich App 522, 530–531; 726 NW2d 770 (2006). The Michigan Supreme Court has "taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties exercising reasonable diligence, could have raised but did not." *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007).

Only the third element of res judicata is at issue in this case.[8] Plaintiff argues that he did not assert any claims for bodily injury in any prior litigation and, therefore, res judicata cannot be applied to bar the present action. Plaintiff concedes that the prior litigation referred to "personal injury," but contends that the term was "used to differentiate general injury to *property* from injury to *person*" and that no bodily injury existed at the time of the prior litigation. He argues that his use of the term "personal injury" in the prior litigation "referred not to bodily injury but, rather, to such non-physical harm such as pain and suffering, emotional distress, harm to reputation, and other consequential damages." He also argues that the personal injury now alleged had not yet manifested itself and therefore could not have been brought in 2002.

However, a review of the allegations in plaintiff's complaints in the 2002 litigation does not support plaintiff's arguments. As quoted above, plaintiff alleged in 2002 that the unlawful

[8] Plaintiff concedes in his brief on appeal that "At the Trial Court, the parties did [sic, not] dispute that both prongs one and two . . . were satisfied. However, the third prong . . . has not been satisfied.

disposal, removal, and transportation of hazardous waste *caused* personal injuries and that he *suffered* personal injuries as a result of the removal and disposal of allegedly hazardous waste contained in the soil. As the trial court noted, plaintiff is bound by these allegations about manifested personal injuries, which are admissions for purposes of the present case. *Slocum v Ford Motor Co*, 111 Mich App 127, 132; 314 NW2d 546 (1981).

Even if plaintiff did not assert a personal injury cause of action in the 2002 litigation, the broad application of res judicata bars the present lawsuit. As previously noted, res judicata "bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." Michigan applies the "same transaction" test as a method to determine whether res judicata will bar a subsequent claim. Even when a subsequent lawsuit is based on different kinds or theories of relief, the transactional test is satisfied if a single group of operative facts gives rise to the claimed relief. *Washington* 478 Mich at 420. The transactional test provides that "the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief. *Adair v Michigan*, 470 Mich 105, 125; 680 NW2d 386 (2004). Thus, under Michigan's broad application of res judicata applying the same transaction test, whether evidence necessary to support a first lawsuit differs from that necessary for subsequent claims will not be dispositive. *Id*. at 124-125. Instead, "[w]hether a factual grouping constituted a transaction for purposes of res judicata is determined by considering whether the facts are related in *time, space, origin or motivation*, [and] whether they form a convenient trial unit . . . ." *Id*. at 125, quoting 46 Am Jur 2d, Judgments, § 533, p 801.

In *RDM Holdings, LTD v Continental Plastics*, 281 Mich App 678, 713-714; 762 NW2d 529 (2008), the Court observed:

> Here, of course, no claims were raised in the bankruptcy court. It would be incorrect, however, to conclude that because the particular claims were not raised in the bankruptcy proceedings, no identity of claims exists. Instead, identity of causes of action means an identity of the facts creating the right of action and of the evidence necessary to sustain each action. Had plaintiffs raised the fraudulent conveyance claim in the bankruptcy proceedings, as they should have done, the claim would have arisen out of the same transaction and core operative facts giving rise to the claim contained in RDM II; the substance of the actions would be identical.

It is of no consequence that plaintiff did not label the claims in his 2002 complaints as personal injury claims. The label of claims is not the decisive factor in whether res judicata applies. The 2002 litigation shares an identity of the facts creating the right of and evidence necessary to sustain a personal injury action at the time he filed the 2002 lawsuits.

Plaintiff contends that he could not have raised his current claims in the prior litigation because the bodily injuries alleged in this action did not manifest themselves until after the prior lawsuits were resolved. He contends that he had not sustained bodily injury at the time of the 2002 litigation and, therefore, the present case does not involve worsening of bodily injury. Thus, he maintains that this case is distinguishable from *Sherrell v Bugaski*, 169 Mich App 10; 425 NW2d 707 (1988), the case on which the trial court relied. We disagree. Contrary to

plaintiff's contention, plaintiff did allege personal injury as a result of exposure to the hazardous waste in his 2002 complaints. The trial court correctly opined:

> In *Sherrell*, a woman injured in an automobile accident filed her first action against the driver and the city which owned the car. The suit was disposed of by summary disposition on the ground that there was no serious impairment of bodily function as a matter of law. The woman subsequently brought a second suit against the driver and the city, after she discovered she had a herniated disc, which she alleged resulted from the accident. The Court of Appeals held that summary disposition of the first suit barred the second suit under the doctrine of *res judicata* despite the argument that the injury which manifested itself after the first suit prevented her from raising the herniated disc injury in the first suit. The Court reasoned that "[s]imply because the facts on the issue of plaintiff's damages have changed, the application of *res judicata* is not barred." *Sherrell, supra*, at 14. The Court further reasoned that:
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> > In a negligence action, the trier is required to predict the likely future complications and damages and to ascertain a lump sum to compensate for past, present and future damages. There is no modification of the verdict even where the passage of time proves the prediction erroneous, and a second suit for damages resulting from the same breach is not permitted even if there has been a change in physical condition or other circumstance. In this context, the defendant is entitled to rely on the plaintiffs having presented all claims arising from the breach. He only expects to have to defend one suit. [*Id*. at 15, citing *Gose v Monroe Auto Equipment Co*, 409 Mich 147, 199; 294 NW2d 165 (1980)].
>
> In the instant case, like in *Sherrell*, Tingley filed previous actions alleging manifest claims for personal injury which were ultimately dismissed. Also like in *Sherrell*, Tingley has now filed another action seeking to recover based on allegedly newly manifested injuries. The law is clear that a change in damages does not bar the application of *res judicata*. The Court is therefore satisfied that *res judicata* applies in the instant case and bars Plaintiffs from bringing this lawsuit.

Plaintiff next argues that the trial court erred by finding that plaintiff's claims against PNC were time-barred by the statute of limitations in MCL 600.5805. We review de novo a trial court's determination that an action is time-barred. *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36, 40; 709 NW2d 589 (2006).

MCL 600.5805 provides in relevant part:

> (1) A person shall not bring or maintain an action to recover damages for injuries to person or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of limitations prescribed by this section.

* * *

> (10) Except as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person, or for injury to a person or property.[9]

A claim is deemed to accrue "at the time the wrong upon which the claim is based was done regardless of the time when the damage results." MCL 600.5827. For purposes of MCL 600.5827, the term "wrong" refers to the date on which the plaintiff was harmed by the defendant's act, not the date on which the defendant acted negligently. *Chase v Sabin*, 445 Mich 190, 195-196; 516 NW2d 60 (1994), overruled in part on other grounds in *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 479 Mich 378, 392; 738 NW2d 664 (2007). Courts have long held that claims accrue when the harm begins. See, e.g., *Connelly v Paul Ruddy's Equip Repair & Service Co*, 388 Mich 146, 152; 200 NW2d 70 (1972); *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 291; 769 NW2d 234 (2009) (limitation period run "after the claim first accrued to the plaintiff," and "[s]ubsequent claims of additional harm caused by one act do not restart the claim previously accrued") (quoting MCL 600.5805(1)).

Here, plaintiff alleged that he was harmed when he was exposed to hazardous materials in 1999 through 2001 or 2002 during the renovation of the Berkey & Gay site. He alleged that he had been exposed to toxic materials and suffered personal injuries at the time he brought actions in 2002. Consequently, plaintiff's alleged harm began in 1999, twelve years before he filed the present action. His claims, and the derivative claims of his wife, are therefore time-barred.

Lastly, plaintiff argues[10] that the trial court clearly erred in holding that plaintiff's claim was frivolous under MCL 600.2591. A trial court's ruling on a motion for costs and attorney fees is reviewed for an abuse of discretion. *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010). However, this Court reviews for clear error a trial court's findings with regard to whether a claim or defense was frivolous. *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

Every document of a party represented by an attorney must be signed by at least one attorney of record, which constitutes a certification that: (1) the signor has read the document; (2) to the best of the signor's knowledge, information, and belief after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (3) the document is not interposed

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[9] Our Legislature slightly reworded MCL 600.5805(1) in 2011 PA 162. Prior to the revision, subsection 10 read: "The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property." The rewording has no effect on the analysis in this case.

[10] Docket No. 312177.

for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. MCR 2.114(D); *Attorney Gen'l v Harkins*, 257 Mich App 564, 575-76; 669 NW2d 296 (2003). If a pleading is signed in violation of MCR 2.114(D), the party or attorney, or both, must be sanctioned. MCR 2.1214(E). In addition, a party pleading a frivolous claim is subject to costs under MCR 2.625(A)(2). MCR 2.114(F). MCR 2.625(A)(2) provides that if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591. Under MCL 600.2591(3), an action is frivolous if any one or more of the following conditions is present:

> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit.

These provisions "impose an affirmative duty on each attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed." *LaRose Market, Inc v Sylvan Ctr, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995). The reasonableness of the inquiry is determined by an objective standard. *Id*. The focus is on the efforts taken to investigate a claim before filing suit, and a determination of reasonable inquiry depends on the facts and circumstances of the case. *Id*. The attorney's subjective good faith is irrelevant. *Lloyd v Avadenka*, 158 Mich App 623, 630; 405 NW2d 141 (1987).

If the trial court determines that a claim is frivolous, sanctions are mandatory. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 268; 548 NW2d 698 (1996). The Court need not hold an evidentiary hearing before imposing sanctions but must make specific findings as to the reasonableness of the attorney fees. See *46th Circuit Trial Ct v Crawford Co*, 266 Mich App 150, 180-181; 702 NW2d 588 (2005), reversed on other grounds 476 Mich 131; 719 NW2d 553 (2006).

Defendants argued that plaintiff's claims were not well grounded in fact or law and were devoid of arguable legal merit. Defendants noted that the hazardous soil was removed at the latest in August 2001, and that plaintiff knew of physical injuries in 2002 when he filed three lawsuits claiming personal injury. Plaintiff did not file the present suit involving alleged personal injuries as a result of the removal of the hazardous soil until 2011. Defendants argued that if plaintiff's counsel had made a reasonable inquiry into the circumstances surrounding the case, counsel would have learned that the statute of limitations had run. Defendants provided documentation that correspondence had been sent to plaintiff's counsel by each defendant's counsel regarding the statute of limitations issue as well as the existence of the previous three lawsuits.

The trial court granted defendants' motion for sanctions, opining in pertinent part:

> In the instant case, Tingley's claim for personal injuries arises out of an event which occurred between November 1999 and August 2001, and which has already been decided on the merits in his previous litigation from 2002. Because

> the doctrine of *res judicata*, as applied in Michigan, "bars not only the claims already litigated, but also every claim arising from the same transaction that the parties exercising reasonable diligence, could have raised but did not," Tingley should have known that his previous litigation of a personal injury claim estopped this latest claim from being brought. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Furthermore, Plaintiff's counsel received letters from each of defendant's counsel explaining that Plaintiff's claims were without legal merit and that failure to dismiss voluntarily would result in the aggressive pursuit of sanctions. Tingley brought the lawsuit anyway. Plaintiffs signed the complaint and therefore violated MCR 2.114 by pleading the frivolous claim explained above. However, the Court believes that Mrs. Tingley and Plaintiffs' attorneys did not sign the complaint in bad faith and therefore it does sanction them. Mr. Tingley, however, is subject to sanctions under MCR 2.625(A)(2) and MCR 2.115(E)–(F).
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> The Plaintiff's brief and supplemental brief opposing sanctions also do nothing to sway this court to rule in their favor. Throughout their extensive briefs, the Plaintiffs merely reinstate the meritless arguments that proved unsuccessful during the summary disposition hearing. In addition, this court is satisfied that there was no professional misconduct on the part of either Mr. Sperla or Mr. Schenk, and that neither attorney made false statements of fact or law as this court is satisfied that Tingley did in fact bring a personal injury claim previously.
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> The fact that actions barred by the doctrine of *res judicata* and the statute of limitations have "no support either in law or in fact", combined with the fact that Tingley's personal injury claim had been decided against him nearly ten years ago, satisfies the Court that Tingley had "no reasonable basis to believe that the facts underlying . . . [his] position were in fact true." [*Richardson v DAIIE*, 180 Mich App 704; 447 NW2d 791 (1989)] *DAIIE*, *supra*, at 704; MCLA 600.2591(3)(a)(ii). Therefore, the Court is further satisfied that Tingley knew his legal position was devoid or arguable legal merit and his primary purpose in bringing yet another action was to harass, embarrass, or injure the Defendants.

The record in this case supports the trial court's factual findings. Plaintiff knew or should have known that his prior complaints had sought recovery for injury to his person, and he knew or should have known that he had no basis to argue that that his complaint had been timely filed because his claim accrued, and he had discovered the fact of personal injury, more than ten years before the commencement of the present suit. Plaintiff's claims were devoid of arguable legal merit and, pursuant to the statutory terms, the award of sanctions was mandatory.

Plaintiff also argues that the award of attorney fees was not reasonable because the number of hours billed by appellants' attorneys was not reasonable given the fact that the litigation was disposed of by summary disposition. His sole legal analysis is that "the number of hours accrued on the billing records . . . give great cause for concern." He contends that "the trial court did not properly account for a reasonable amount of hours to prepare for two motions and attendance at the corresponding hearings." Plaintiff offers little in terms of legal analysis of

the facts to support his position, other than to state that the billings records "merely indicate that the majority of the hours were spent making phone calls, emailing, reviewing documents, and generally preparing" and "research and analysis." He gives general examples with regard to defendants Fifth Third and Pioneer, but does not mention defendants Dykema and PNC. He makes unsupported and unelaborated claims that the costs were unreasonable. However, this Court will not search for authority to support a party's position. *Schadewald v Brule*, 225 Mich App 26, 34; 570 NW2d 788 (1997). This is especially applicable when this Court is reviewing a decision of the trial court for an abuse of discretion.

*Smith v Khouri*, 481 Mich 519, 530-531; 751 NW2d 472 (2008), calls for the trial court to determine a reasonable hourly rate and multiply by the reasonable number of hours expended.[11] Michigan law merely requires that an award of sanctions be reasonable. *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002). There is no precise formula for computing the reasonableness of an attorney's fee, and the court must review the amount of attorney fees for each case in light of its own particular facts and circumstances. *BJ's & Sons Constr Co, Inc v Van Sickle*, 266 Mich App 400, 410; 700 NW2d 432 (2005). In this case, the court found that defendants

> [H]ave 'submitted a significant amount of evidence that they incurred substantial expense and attorney fees to successfully defend against this completely frivolous litigation.' *BJ's & Sons supra*, at 410-411. There were six parties, which required multiple sets of pleadings and court appearances by each defendant. Each defendant was also required to research and review the multiple prior lawsuits brought by Mr. Tingley concerning the Berkey & Gay site. Furthermore, this case involved complicated toxic tort issues and, if resolved in their favor, would have resulted in an extremely large judgment for the plaintiffs. The defendants therefore faced great difficulty in defending the case and are owed reasonable cost and attorney fees as discussed in *BJ's & Sons*.

In discussing pre-motion billings, with regard to defendant Dykema, the trial court noted that documentation revealed that counsel had spent over 225 hours on the present suit. With regard to defendant PNC, the trial court noted that two of the attorneys had spent 3.8 hours and 40.2 hours respectively on the present case, and that a paralegal had spent 2.9 hours on the present case. With regard to defendant Pioneer, the trial court noted that counsel did not represent defendant Pioneer in the previous lawsuits brought by plaintiff and was "therefore required to conduct an extensive review of the pleadings from these cases, as well as Tingley's litigation history over the past ten years." With regard to each of the defendants, the trial court noted that it

> [H]as also thoroughly reviewed the Billing Summaries provided by [each of the defendant law firms] and finds that they accurately state the hours necessarily spent defending this lawsuit. This includes the time spent reviewing Tingley's

[11] Plaintiff does not challenge the reasonable hourly rate.

> prior lawsuits, as well as preparing motions for summary disposition and the current motion for sanctions.
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> This Court therefore determines that all bills provided in the Motions for Sanctions are appropriate and all amounts in controversy are adequate. It therefore sanctions William Q. Tingley III alone. The court does not place sanctions upon Bridget Tingley or the Plaintiffs' attorneys.

The court also took into consideration the updated billings presented by defendants, per the court's order, regarding additional work required in this matter as a result of plaintiff's post-motion filings. Ultimately, the court awarded the following amounts to defendants:

Defendant Dykema: $66,998.47

Defendant PNC: $14,975.35

Defendant Pioneer: $61,918.00

Defendant Fifth Third: $49,592.85

Contrary to plaintiff's argument, this case did not involve simply the preparation of, and attendance at a hearing on, a motion for summary disposition. The lower court record with regard to the present case is voluminous. Plaintiff has simply failed to provide any evidence as to why the trial court's determination of the reasonable hours spent as documented by each defendant was outside the principled range of outcomes.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Jane M. Beckering